

Petrochem Insulation, Inc. and Northern Nevada Pipe Trades Council No. 51, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Thomas J. Hunter, and Locals 62, 159, 228, 246, 342, 343, 350, 365, 393, 437, 444, 447, 460, 467, 471, 483, 492, 503, and 662 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 20-CA-24071

November 19, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND LIEBMAN

The General Counsel of the National Labor Relations Board filed a complaint and an amended complaint on May 31 and June 25, 1996, respectively, alleging that the Respondent violated Section 8(a)(1) of the Act. The Respondent filed answers admitting in part and denying in part the allegations of the complaints and raising certain affirmative defenses.

On October 9, 1996, the General Counsel filed a Motion for Summary Judgment and brief in support, with exhibits attached. The General Counsel submits that the Respondent's answers raise no bona fide issues of fact requiring a hearing. On November 29, 1996, the Respondent filed an opposition to the motion and a Cross-Motion for Summary Judgment in its favor, with exhibits attached. The General Counsel filed a response to the Respondent's Cross-Motion for Summary Judgment and reply brief. The Charging Parties filed a reply brief in support of the General Counsel and in opposition to the Respondent's Cross-Motion for Summary Judgment, and the Respondent filed a brief in reply to the General Counsel and Charging Parties.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motions for Summary Judgment

The principal issue in this case is whether the Respondent violated Section 8(a)(1) by filing and maintaining a civil lawsuit against the Charging Party Unions in Federal district court. The General Counsel and the Unions contend that the Respondent's suit lacked merit because it was dismissed by the District Court with prejudice, and the order was upheld on appeal. The General Counsel and the Unions further argue that the Respondent brought

this suit against the Unions in retaliation for their having engaged in activities protected by Section 7 of the Act. Because the suit lacked merit and was filed for retaliatory purposes, the General Counsel and the Union urge that, under *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), the Board should find that it was unlawfully filed and maintained, and should require the Respondent to reimburse the Unions for attorneys' fees incurred as a result of the suit.

The Respondent contends that its suit was lawful because, in its view, (1) the Union's actions that were the subject of the suit were not protected by Section 7; (2) the suit had a reasonable basis in fact and law; and (3) the suit was not filed with a retaliatory motive. The Respondent also contends that even if it violated the Act the Board should not require it to pay the Unions' attorneys' fees.

On the basis of the Respondent's admission of relevant allegations in the complaints, as well as other factual admissions made in its briefs, we find that there are no material issues of fact warranting a hearing and that as a matter of law the Respondent has violated Section 8(a)(1) as alleged. Accordingly, we grant the General Counsel's Motion for Summary Judgment and deny the Respondent's cross-motion.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Petrochem Insulation, Inc., a California corporation with an office and place of business in Vallejo, California, is a mechanical insulation contractor specializing in power plant and industrial construction. During the 12-month period ending June 20, 1991, the Respondent purchased and received at its Vallejo, California facility goods valued in excess of \$50,000 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that each of the Unions is a labor organization within the meaning of Section 2(5) of the Act.²

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Respondent is a nonunion construction firm that performs construction and maintenance work for power plants and other industrial entities in the northern California area. The Respondent claims that beginning in 1988, the Unions commenced a campaign to cause its "clients" and potential clients to hire only unionized contractors to perform work for them and "to [decline] to allow Petrochem to bid for or perform certain projects for them because Petrochem was not a signatory to a

¹ The Respondent filed a motion to strike the Charging Parties' reply brief on grounds that a 13-page affidavit attached to the brief is "nothing more than legal argument," which extends beyond the 50-page limitation established by the Board. The Charging Party filed an opposition to the Respondent's motion. The matters set forth in the affidavit were not considered in deciding the issues presented here and, therefore, we find it unnecessary to pass on the Respondent's motion.

² District Council No. 51 was dissolved effective December 31, 1995.

union collective-bargaining agreement.” According to the complaints filed by the Respondent in Federal court, the Unions’ campaign consisted of filing, and threatening to file, environmental impact objections to projects on which the Respondent was a contractor, intervening in state permit proceedings and objecting to the issuance of permits “in order to delay and frustrate developers” of those projects, and petitioning “relevant administrative bodies, and ultimately the courts, with a large number of objections” regarding air quality permits.

On December 20, 1990, the Respondent filed suit in the U.S. District Court for the Northern District of California alleging that the Union’s conduct constituted a conspiracy to “extort developers of [certain large energy-production facilities] to enter into and adhere to unlawful hot cargo and union project agreements” in violation of the Racketeering Influence and Corrupt Organization Act (RICO).³ The complaint included a demand for treble damages. The district court granted the Unions’ motion to dismiss the complaint, finding that the RICO claims were preempted by the Act.⁴

The Respondent then requested leave to file an amended complaint which realigned the above-described conduct, this time claiming that the Unions violated the Sherman Antitrust Act,⁵ in addition to RICO. The district court found the first amended complaint facially inadequate and denied leave to file it. However, the Respondent was permitted to file a second amended complaint to allege an antitrust claim, provided that the amended complaint was factually explicit as to the following:

- (a) The specific identity of, and each party to, each contract, combination, or conspiracy in restraint of trade to which a non-labor group was allegedly a member.
- (b) The acts each defendant performed or undertook in furtherance of each contract, combination or conspiracy.
- (c) The injury to competition that resulted from each alleged contract.
- (d) The geographic and product market allegedly monopolized by any defendant, and the acts each named defendant undertook to pursue monopolization of that market.

Thereafter, the Respondent filed a second amended complaint alleging Sherman Act violations. The Respondent alleged that the Union violated section 1 of the Sherman Act by conspiring to restrain trade by entering into hot cargo agreements with energy project developers

that precluded the Respondent from bidding on the developers’ construction projects. The Respondents also alleged that the Unions restrained trade in violation of section 2 of the Sherman Act by filing “sham” petitions and meritless environmental objections to monopolize the relevant market.

The district court dismissed with prejudice the Respondent’s second amended complaint.⁶ In dismissing the section 1 antitrust claim, the court found that the Respondent “still fails to state a cognizable claim for two independent reasons, each of which has previously been explained to plaintiff, and each of which plaintiff has failed to cure.”⁷ Specifically, the court found that the Respondent (1) failed to identify the parties to and contents of any alleged contract in restraint of trade and (2) failed to plead the injury to competition that resulted from each alleged contract.

The court dismissed the Respondent’s antitrust claim premised on section 2 of the Sherman Act because it failed to identify the contractors who supposedly combined with the Unions to monopolize the Respondent’s market through sham petitioning, and because the complaint failed to allege that the Unions “have threatened or pursued a single meritless objection to any construction project, much less identify that objection or allege why such an objection should be considered meritless.”⁸ On appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court’s dismissal of the Respondent’s complaint with prejudice.⁹ Following the Supreme Court’s denial of the Respondent’s petition for writ of certiorari,¹⁰ the General Counsel filed the instant complaint.

B. Discussion

The complaint alleges that the Respondent violated Section 8(a)(1) by bringing a meritless suit against the Unions to enjoin them from engaging in protected concerted activity and to recover damages from them. The Board recently considered the same allegation in similar circumstances in *BE & K Construction Co.*, 329 NLRB 717 (1999). In *BE & K*, the Board determined that disposition of this issue is governed by legal principles set forth by the Supreme Court in *Bill Johnson’s*. The Court in *Bill Johnson’s* held that establishing a lack of reasonable basis in fact or law and a retaliatory motive are prerequisites to the Board’s *enjoining* prosecution of a pending lawsuit. The standard is different, however, if the lawsuit has resulted in a final judgment adverse to the plaintiff. Under those circumstances, the Court held that the Board may proceed to consider whether the adjudicated lawsuit was filed with retaliatory intent, and if such

³ 18 U.S.C. § 1962, et al.

⁴ *Petrochem Insulation, Inc. v. Northern California Pipe Trades Council*, 137 LRRM 2194 (N.D.Cal. 1991).

⁵ 15 U.S.C. §§ 1 and 2.

⁶ 139 LRRM 2956 (N.D.Cal. 1992).

⁷ 139 LRRM at 2961.

⁸ 139 LRRM at 2965.

⁹ 8 F.3d 29 (1993).

¹⁰ 510 U.S. 1191 (1994).

intent is present, find a violation of the Act and order appropriate relief.

As discussed above, the district court dismissed the Respondent's lawsuit including the allegation that the Unions' governmental petitioning activity constituted antitrust violations, and the Ninth Circuit affirmed the result. Accordingly, the Respondent's suit lacked merit within the meaning of *Bill Johnson's*.¹¹ We therefore consider whether the suit was filed with an intent to retaliate against the Unions for engaging in protected activity.

As an initial matter, we must determine whether the Unions' actions were protected from retaliation by Section 7 of the Act. See *Braun Electric Co.*, 324 NLRB 1, 3 (1997). The Respondent makes two general contentions that they were not. It argues that the conduct in question was engaged in *by the Unions* and therefore did not involve retaliation against *employee* protected activity. It also contends that, because the Unions did not represent the Respondent's employees, the Act does not protect their actions from a retaliatory lawsuit. The Board addressed identical contentions with respect to the unions' activity in *BE & K*, 329 NLRB at 719. For the reasons fully set forth there, we find no merit in the Respondent's contentions.

The Unions' actual conduct at issue here was clearly protected. Their stated objective, set forth in an internal union report entitled "Participation in the Permit Process," was to intervene before state environmental and other regulatory permit proceedings incident to construction projects in northern California in order to "force construction companies to pay their employees a living wage, including health and other benefits."¹² This is a form of area-standards activity which is undisputedly protected under Section 7. *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180 (1978) (area-standards picketing).¹³ As the Board explained in *Giant Food Markets*, 241 NLRB 727, 728 (1979), the rationale for protecting such activity is that a union has a legitimate interest in "protect[ing] the employment standards it has successfully negotiated . . . from the unfair competitive advantage that would be enjoyed by an employer whose labor cost package was less than those of employers subjected to the area contract standards."¹⁴ The Unions' governmental petitioning activity here, which sought to force

the Respondent and other nonunion construction companies to pay their employees union-scale wages and benefits, was clearly in furtherance of an area-standards objective of protecting the economic terms of employment enjoyed by the employees they represented. If successful, such efforts would not only expand union job opportunities for current union members but also would improve their ability to bargain for higher wages by mitigating employer resistance based on concerns about being undercut by nonunion competitors.¹⁵ Further, by seeking to ensure that the Respondent or any successful construction project bidder address the environmental considerations with respect to toxic materials and pollution control—the Unions' other stated purpose for participating in the state permit proceedings—they acted in furtherance of the safety and health of all employees who would eventually be employed at a particular worksite, including potentially the employees the Unions represented as well as those of the Respondent. That clearly is concerted activity that falls within the "mutual aid or protection" language of Section 7. See *GHR Energy Corp.*, 294 NLRB 1011, 1014 (1989), *enfd.* 924 F.2d 1055 (5th Cir. 1991).

In its final argument on this issue, the Respondent contends that the Unions' conduct was not protected because it constituted a secondary boycott in violation of Section 8(b)(4)(ii)(B) of the Act. Specifically, the Respondent argues that the Unions participated in and threatened to participate in environmental permit proceedings with the unlawful secondary object of coercing project owners to cease doing business with the Respondent and other non-union contractors. We disagree.¹⁶

The Supreme Court's holding in *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building Trades Council*, 485 U.S. 568 (1988), precludes finding that the Unions' actions here violated Section 8(b)(4)(ii)(B) and, hence, were unprotected. In order to violate this statutory provision a union must engage in conduct "attended by

¹¹ For the reasons set forth in *BE & K*, *supra*, we reject the Respondent's argument that *Professional Real Estate Investors v. Columbia Pictures Industries*, 508 U.S. 49 (1993), altered the Supreme Court's approach to allegedly retaliatory lawsuits under Sec. 8(a)(1) as announced in *Bill Johnson's*.

¹² This report was attached as an exhibit to the Respondent's second amended complaint.

¹³ See also *O'Neil's Markets v. NLRB*, 95 F.3d 733 (8th Cir. 1996) (area-standards handbilling).

¹⁴ Although the court of appeals remanded the case to the Board, the court quoted this part of the Board's decision with approval. 633 F.2d 18, 23 fn. 11 (6th Cir. 1980).

¹⁵ See *Electrical Workers IBEW Local 501 v. NLRB*, 756 F.2d 888, 894 (D.C. Cir. 1985); *NLRB v. Circle Bindery, Inc.*, 536 F.2d 447, 452 (1st Cir. 1976).

¹⁶ Contrary to the General Counsel and the Unions, we find that the Respondent is not barred by Sec. 10(b) of the Act from contending that the Unions' conduct was unprotected. Sec. 10(b) provides that "no complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge." That provision has been interpreted by the Board also to preclude raising, as a *defense* to a complaint allegation, conduct as to which Sec. 10(b) would bar a complaint if it were alleged as an unfair labor practice. See, e.g., *Sewell-Allen Big Star*, 294 NLRB 312, 313 (1989), *enfd. mem.* 943 F.2d 52 (6th Cir. 1991), *cert. denied* 504 U.S. 909 (1992). We find this principle inapplicable in the type of *Bill Johnson's* setting presented in this case where the General Counsel, as part of his burden in establishing a *prima facie* violation of Sec. 8(a)(1), must show that the Unions' alleged secondary activity, which occurred outside the 10(b) period, was protected. Because of this required showing, the Respondent cannot be precluded from asserting facts otherwise barred by Sec. 10(b) in countering the General Counsel's case.

threats, coercion or restraint.”¹⁷ In *DeBartolo*, the Supreme Court held that Section 8(b)(4)(ii)(B) does not cover peaceful handbilling because such activity, unlike picketing, accomplishes its goal by the persuasive force of the ideas it conveys, rather than by coercion, intimidation, or restraint. *Id.* at 580. The Court explained that handbilling, unlike picketing or striking, involves behavior solely of a speech-related nature and, therefore, to conclude that it is unlawfully coercive would pose “serious questions of the validity of Section 8(b)(4) under the First Amendment.” *Id.* at 576. Accordingly, because the secondary activity in *DeBartolo* involved handbilling only, unaccompanied by violence, picketing, patrolling, or a strike, the Court concluded that the union’s handbilling therein was not coercive in violation of Section 8(b)(4)(ii)(B).

Here, rather than handbilling, the Unions petitioned state governmental agencies in furtherance of what the Respondent contends was an illegal secondary object. We agree, however, with the Fifth Circuit in *Brown & Root, Inc. v. Louisiana State AFL*, 10 F.3d 316, 326 (1994), that governmental lobbying by a union “like handbilling, is activity protected by the First Amendment.” Indeed, the right to petition a legislative body falls squarely under the “umbrella of ‘political expression.’”¹⁸ Accordingly, in order to avoid the potentially serious First Amendment problems that would result if the Unions’ governmental petitioning were found to constitute “coercion” under Section 8(b)(4)(ii)(B), we shall follow *DeBartolo* and conclude that such conduct is lawful and, hence, protected by the Act.

In so holding, we find it unnecessary to decide whether the Unions’ petitioning could be found to be coercive for 8(b)(4) purposes if, as the Respondent alleges, the Unions had filed, or threatened to file, “sham” petitions and meritless environmental objections with a secondary objective. As we have noted above, the Respondent alleged in its lawsuit that the Unions had violated section 2 of the Sherman Act by filing such petitions and objections. But the court dismissed that claim because it found that, despite its instruction to identify the Unions’ actions that allegedly constituted monopolization, the Respondent had failed to allege that the Unions had “threatened or pursued a single meritless objection to any construction project, much less identify that objection or allege why such an objection should be considered meritless.”¹⁹ In view of its failure to identify in the court proceeding any example of the type of Union conduct that it contended then, and contends now, was unlawful, we infer that the Respondent was unable to produce any such evidence before the court and would be equally unable to do so

before the Board. Because there is no support for the Respondent’s contention that the Unions filed their petitions and objections without regard to their merits, we find that the Unions’ conduct did not violate Section 8(b)(4)(B) and therefore did not lose its protected character.²⁰

Having found, in light of the Federal court’s dismissal of the Respondent’s lawsuit, that the suit was meritless under *Bill Johnson’s*, the remaining question in determining whether the lawsuit violated Section 8(a)(1) is whether it was filed for retaliatory reasons. Although we find no direct evidence in this regard, we note that “[m]otive or intent almost always must be inferred from circumstantial evidence.”²¹ Here, we infer a retaliatory motive behind the Respondent’s lawsuit based on the following circumstantial evidence.

First, it is evident from the complaint allegations of the Respondent’s lawsuit that it was filed in direct response to the Union’s participation in the state environmental permit proceedings. As found above, that conduct was protected by Section 7 of the Act. Since the lawsuit was “aimed directly at [this] protected activity,” and necessarily tended to discourage future Section 7 activity of this kind, it was, by definition, retaliatory within the meaning of *Bill Johnson’s*.²²

Our conclusion that the lawsuit was driven by retaliatory considerations can also be inferred from the treatment the Respondent’s lawsuit received by the Federal court. As stated by the Court in *Bill Johnson’s*, where an employer’s suit is found without merit, “the Board would be warranted in taking that fact into account in determining whether the suit had been filed in retaliation for the exercise of the employees’ [Sec.] 7 rights.”²³ Doing so here, we note that the Respondent’s lawsuit was found not just to have lacked merit—that would be a charitable characterization of its outcome. The lawsuit’s claims did not even get to a jury pursuant to the Respondent’s demand because it was unable to plead a legally cognizable cause of action, notwithstanding that the district court provided the Respondent three opportunities to do so. This degree of failure “undermines [the Respondent’s] claim that it filed the suit to defend its legally protectable

²⁰ Because this is a summary judgment proceeding, we are required to evaluate the evidence in the light most favorable to the nonmoving party. In order to grant the General Counsel’s motion and find the 8(a)(1) violation, then, we must view the facts in the light most favorable to the Respondent. That does not mean, however, that we have to accept as true, for the purposes of ruling on the General Counsel’s motion, factual contentions raised by the Respondent that have already been rejected by the court.

²¹ *Geske & Sons, Inc. v. NLRB*, 103 F.3d 1366, 1375 (7th Cir. 1997).

²² *H. W. Barss*, 296 NLRB 1286, 1287 (1989); *Phoenix Newspapers*, 294 NLRB 47, 50 (1989); *BE & K Construction*, 329 NLRB at 721.

²³ 461 U.S. at 747.

¹⁷ See *NLRB v. Servette, Inc.*, 377 U.S. 46, 54 (1964).

¹⁸ *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 512–513 (1972).

¹⁹ 139 LRRM at 2965.

interests”²⁴ and demonstrates instead its retaliatory purpose.

Finally, that the Respondent’s suit was filed with a retaliatory motive can be inferred, in part, from the treble damages it sought from the outset as compensation for its alleged losses. The Respondent asserts that treble damages are statutory components of RICO and antitrust claims and, as such, cannot be evidence of motive. We disagree. It was the selection of the RICO and antitrust claims, with their provisions for treble damages, which underscores the Respondent’s retaliatory intent. The Respondent had available a less drastic means of recovering its alleged losses; it could have filed suit in Federal district court under Section 303 of the Act to recover its *actual* damages by alleging as unlawful what it now argues was unprotected conduct, i.e., that the Unions’ conduct violated Section 8(b)(4).²⁵ Instead, its RICO and antitrust claims constituted an attempt to obtain *three-times* its actual damages. In comparable circumstances where an employer has sought punitive damages in addition to alleged actual damages, the Board has inferred retaliatory intent.²⁶ We draw the same inference here.

CONCLUSION OF LAW

By filing and prosecuting a Federal court lawsuit against the Unions and their agents with causes of actions which were without legal merit and were motivated by an intent to retaliate against the Unions’ protected concerted activity on behalf of its members and other employees, the Respondent has violated Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to reimburse the Unions for all legal and other ex-

penses incurred in defending against the Respondent’s lawsuit, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); and *Teamsters Local 776 (Rite Aid Corp.)*, 305 NLRB 832, 835–836 and fn. 10 (1991), *enfd.* 973 F.2d 230 (3d Cir. 1992), *cert. denied* 507 U.S. 959 (1993).²⁷

ORDER

The National Labor Relations Board orders that the Respondent, Petrochem Insulation, Inc., Vallejo, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Filing and prosecuting lawsuits with causes of actions against the Unions that are without legal merit and are motivated to retaliate against activity protected by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse the Unions for all legal and other expenses incurred in the defense of the Respondent’s lawsuit in the manner set forth in the remedy section.

(b) Within 14 days after service by the Region, post at its facility in Vallejo, California, copies of the attached notice marked “Appendix.”²⁸ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are cus-

²⁴ *Diamond Walnut Growers v. NLRB*, 53 F.3d 1050, 1090 (9th Cir. 1995).

²⁵ See *Longshoremen & Warehousemen v. Juneau Spruce Corp.*, 342 U.S. 237 (1952).

Sec. 303 provides that

(a) It shall be unlawful, for the purpose of this section only, . . . for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the . . . Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States . . . and shall recover the damages by him sustained and the cost of the suit.

²⁶ *Summitville Tiles, Inc.*, 300 NLRB 64, 66 (1990); *H. W. Barss*, 296 NLRB at 1287–1288.

Several courts of appeals have also viewed antitrust treble damages as punitive damages. See *Lyons v. Westinghouse Electric Corp.*, 222 F.2d 184, 189 (2d Cir. 1955) (“[T]wo thirds of the recovery is not remedial and inevitably presupposes a punitive purpose.”); *Clark Oil Co. v. Phillips Petroleum Co.*, 148 F.2d 580, 582 (8th Cir. 1954); *Kline v. Coldwell Banker & Co.*, 508 F.2d 226, 235 (9th Cir. 1974).

²⁷ The Supreme Court in *Bill Johnson’s* expressly authorized the Board to award attorneys’ fees and other expenses to employees who had been sued in violation of Sec. 8(a)(1). 461 U.S. at 747. The Respondent, however, citing *Summit Valley Industries v. Carpenters Local 112*, 456 U.S. 717 (1982), contends that the Board has no authority under *Bill Johnson’s* to order reimbursement to the Unions because it contravenes the “American Rule” which generally precludes the award of attorneys’ fees in legal proceedings. Consistent with *Bill Johnson’s*, we reject that contention. In so doing, we stress that an award of attorneys’ fees is appropriate, not because the Respondent did not prevail in its district court litigation against the Unions, but because it was the Respondent’s lawsuit itself that was unlawful. See *Service Employees SEIU Local 32B–32J v. NLRB*, 68 F.3d 490, 496 (D.C. Cir. 1995). See also *Geske & Sons*, 103 F.3d at 1378. Accordingly, the “American Rule” does not prevent us from awarding the Unions attorneys’ fees.

As noted above in fn. 2, District Council No. 51 was dissolved in December 1995. The Respondent contends that the dissolution renders moot any remedy sought on behalf of that Union. In response, the General Counsel asserts that the District Council’s rights and obligations, including its claim for reimbursement of attorneys’ fees, were assumed by various Local affiliates pursuant to the terms of dissolution and that the remedy originally sought on behalf of District 51 is, therefore, not moot. This is a matter which we shall leave to the compliance stage.

²⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

tomarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 20, 1990.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of responsible official on a form provided by the Region attesting to the steps that the Respondent had taken to comply.

WE WILL NOT file and prosecute lawsuits with causes of actions against the Unions that are without legal merit and are motivated to retaliate against activity protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse the Unions for all legal and other expenses incurred in the defense of our lawsuit, plus interest.

PETROCHEM INSULATION, INC.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.